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PATENT
Application Serial No. 10/789,797
Attorney Ref. No. 014US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of)
Patrick Miles et al.) Group Art Unit: 3762
App. Ser. No. 10/789,797)
Filed: Feb 27, 2004) Examiner: Christopher A. Flory
For: SURGICAL ACCESS SYSTEM AND)
RELATED METHODS)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 28, 2007:

Signature: 

Printed Name: Rory Schermerhorn

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Abandonment mailed on January 29, 2007, which was returned to the U.S. Patent and Trademark Office as undelivered on February 7, 2007, Applicants respectfully submit a Petition for Revival of an Application Abandoned Unintentionally. In support, the Applicants respectfully submit the following:

01/02/2008 SSITHIBI 00000049-502040-10789797
01 FG+2453 770.00-DA

- (1) A copy of the Notice of Abandonment received at the USPTO as undelivered on February 7, 2007 (3 pages);
- (2) Form PTO/SB/64 including the petition fee and statement that the entire delay was unintentional (2 pages).
- (3) A reply in the form of a Responsive Amendment to the outstanding Office Action (12 pages).

Based on the foregoing, Applicant respectfully requests that the Commissioner grant this Petition for Revival of an Application Abandoned Unintentionally under 37 CFR 1.137(b) such that prosecution on the merits may be resumed. Applicant hereby authorizes a payment of \$770.00 fee for the Petition. No other fees are deemed necessary at this time. However, in the event that there are any additional fees to be charged or payments to be credited, the applicant hereby request that any charges or credits be made to Deposit Account No.: 50-2040 for Customer No.: 30,328. In the event that there are any questions concerning the remarks above or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,
NUVASIVE, INC.

By: 
Rory Schermeshorn, Esq.
Registration No. 58,148

4545 Towne Centre Court
San Diego, CA 92121
Tel.: (858) 858-909-1845

December 28, 2007

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

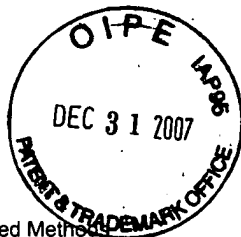
014US1

First named inventor: Patrick Miles

Application No.: 10/789,797

Filed: February 27, 2004

Title: Surgical Access System and Related Methods



Art Unit: 3762

Examiner: Christopher A. Flory

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee
☒ Small entity-fee \$ 770 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))
2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Responsive Amendment (identify type of reply):

☐ has been filed previously on _____
☒ is enclosed herewith. 01/02/2008 SSI:HB1 00000049 10789797

B. The issue fee and publication fee (if applicable) of \$ 01 FC:2453 770.00 DA

☐ has been paid previously on _____
☐ is enclosed herewith.

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This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

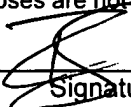
3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



 Signature

December 28, 2007

Date

 Rory Schermerhorn
 Typed or printed name

58,148

Registration Number, if applicable

 4545 Towne Centre Court
 Address

858-909-1845

Telephone Number

 San Diego, CA 92121
 Address
Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☒ Other: SIDS**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

December 28, 2007

Date



 Signature
 Rory Schermerhorn

Typed or printed name of person signing certificate